

HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT,
AND TOURISM

SUBTITLE 14

HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF HAWAII

CHAPTER 170

HOMES REVOLVING FUND PROGRAM

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Historical Note: Chapter 15-170, Hawaii Administrative Rules, is based substantially upon chapter 6-331, Hawaii Administrative Rules.

[Eff 8/25/90; R **OCT 25 1999**]

SUBCHAPTER 1

GENERAL PROVISIONS

\$15-170-1 Purpose. These rules are adopted pursuant to Chapter 91, Hawaii Revised Statutes ("HRS"), to implement sections 201G-401 and 201G-402 HRS, which establish a "homes revolving fund" for the purpose of developing and implementing affordable housing development programs. The homes revolving fund will be administered by the corporation and will be used principally to provide financing for the development and construction of off-site and on-site infrastructure improvements and housing on large tracts of land. [Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-401) (Imp: HRS §201G-401)

\$15-170-2 Legislative authority. The statutory authority for these rules is found in section 201G-4, HRS. [Eff **OCT 25 1999**] (Auth: HRS 201G-4) (Imp: HRS §201G-4)

\$15-170-3 Legislative findings and purpose. The legislature has found that there exists in the State a critical shortage of housing units that are affordable. It is therefore the purpose of these rules to implement the findings and purpose of the legislature to provide a substantial amount of resources to provide for the development of affordable housing development programs to assist Hawaii's residents who are in need of shelter

and to remedy Hawaii's critical housing shortage.

[Eff **OCT 25 1999**] (Auth: HRS §201G-4) (Imp: HRS §201G-4)

§15-170-4 Definitions. As used in this subchapter:

"Board" means the board of directors of the housing and community development corporation of Hawaii

"Corporation" means the housing and community development corporation of Hawaii established under chapter 201G, HRS.

"Develop" or "development" means the planning, financing, acquisition of real and personal property, demolition of existing structures, clearance of real property, construction, reconstruction, alteration, or repairing of approaches, streets, sidewalks, utilities, and services, or other site improvements, or construction, reconstruction, repair, remodeling, extension, equipment, or furnishing of buildings or other structures, or any combination of the foregoing, of any housing project. It also includes any and all undertakings necessary therefor, and the acquisition of any housing, in whole or in part.

"Director of finance" means the duly appointed director of finance of the state department of budget and finance, established pursuant to section 26-8, HRS.

"Eligible developer" means an individual, partnership, corporation, or public agency which the board has determined:

- (1) To be qualified by experience and financial responsibility and support under guidelines established by other applicable rules of the corporation to construct housing of the type described and of the magnitude encompassed by a given project;
- (2) To have submitted plans for a project adequately meeting the objectives of the program and chapter 201G, HRS, the maintenance of aesthetic values in the locale of the project, and the requirements of all applicable environmental statutes and rules; and
- (3) To meet all other requirements that the corporation deems to be just and reasonable, and all other requirements provided in these rules.

"Executive director" means the executive director or the executive director's designated representative.

"Homes revolving fund" means the "homes revolving fund" which was established pursuant section 201G-401, HRS.

"General fund" means the general fund of the State used to account for all transactions which are not accounted for in another fund.

"Governor" means the duly elected governor of the State of Hawaii whose office was created by article V of the Constitution of the State of Hawaii.

"Legislature" means the legislature of the State of Hawaii, which was created pursuant to article III of the Constitution of the State of Hawaii.

"Lower cost housing" in the context of identifying the persons or families intended to be served by such housing, primarily includes housing for persons or families whose incomes are identified as one hundred forty per cent or less of the area median income for each of the counties of Hawaii, Maui, Honolulu, and Kauai as determined by the United States Department of Housing and Urban Development from time to time, and as adjusted by family size. For the purpose of these rules, such persons or families include persons or families within the following income groups:

- (1) "Very low income" - those earning fifty per cent of the area median income and below;
- (2) "Low income" - those earning between fifty percent and eighty per cent of the area median income;
- (3) "Low-moderate income" - those earning between eighty per cent and one hundred twenty per cent of the area median income; or
- (4) "Moderate income" - those earning between one hundred twenty per cent and one hundred forty per cent of the area median income.

"Obligations" mean general obligation bonds of the State, revenue bonds, or other evidences of indebtedness of the State or the corporation as may be authorized by the legislature from time to time.

"Program" means the homes revolving fund program.

"Program funds" means funds which are from the homes revolving fund.

"Project" or "housing project" means a plan, design, or undertaking for the development of dwelling units, and includes all real and personal property, buildings and improvements, including infrastructure improvements, commercial space, lands for farming and gardening, community facilities acquired or constructed

or to be acquired or constructed, and all tangible or intangible assets held or used in connection with the project. [Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-401) (Imp: HRS §201G-401)

\$15-170-5 Delegation. The corporation delegates to the executive director the authority to implement and carry out the purposes of these rules. [Eff **OCT 25 1999**] (Auth: HRS §201G-4) (Imp: HRS §201G-4)

SUBCHAPTER 2

HOMES REVOLVING FUND PROGRAM

\$15-170-11 Sources of funding. The homes revolving fund may be funded from any one or more of the following sources:

- (1) The proceeds of obligations;
 - (A) To fund the program, the State may issue general obligation bonds or the corporation, with the approval of the governor, may issue revenue bonds or other evidences of indebtedness of the corporation pursuant to chapter 201G, HRS, and part III of chapter 39, HRS. The aggregate principal amount of such obligations shall be sufficient to yield the amount appropriated to the program, at such times and in such amounts deemed advisable for the purpose of funding the amount so appropriated. The proceeds from such obligations may be applied either to fund the homes revolving fund or to repay advances made to the homes revolving fund from the general fund.
 - (B) Pending the authorization and issuance of such obligations, the director of finance, with the approval of the governor, may advance funds not exceeding \$120,000,000 without interest, as is requested by the corporation from the general fund under the following limitations and restrictions:

- (i) The corporation must submit a written request to the director of finance and to the governor. The written request must be accompanied by the report described in section 15-170-15.
 - (ii) All funds advanced from the general fund shall be repaid by the corporation or by the State from the proceeds of such obligations issued for the purposes of the homes revolving fund or from other sources upon the demand of the director of finance;
 - (iii) Expenditures of advances from the general fund may be made by the corporation with the approval of the director of finance who may establish procedures and prescribe rules for controlling the expenditure and encumbrance of such funds;
- (2) Appropriations from the legislature; or
 - (3) Other sources as the legislature may determine. [Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-401) (Imp: HRS §201G-401)

§15-170-12 Planning goals. The corporation shall establish realistic goals with respect to projects which are designed to utilize program funds. The goals should be based on two-year and four-year goals. [Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-401) (Imp: HRS §201G-401)

§15-170-13 Selection of projects. (a) Program funds may be utilized for projects which are initiated by the corporation, by an eligible developer together with the corporation, or solely by an eligible developer.

(b) The corporation shall identify the general locations of lands on each of the islands of Hawaii, Maui, Oahu and Kauai, respectively, where the corporation proposes to target for assistance from program funds. In selecting such general locations, consideration shall be given to the location of the

land in relation to economic and employment opportunities, acquisition costs of such land if not already owned by the state, feasibility, availability of public facilities and services such as utilities, availability of schools, police, fire and other related services, state policy (including the State housing functional plan and the Hawaii state plan) and other relevant factors. No one or more of the foregoing factors shall be deemed controlling. Greater consideration may be given to larger, master planned projects which the corporation is currently or in the future will be involved with the development and projects which are or will be situated on land owned by or under the control of the State. Nothing herein shall be deemed to preclude the corporation from allocating program funds for projects which are being developed solely by eligible developers.

[Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-401)
(Imp: HRS §201G-401)

\$15-170-14 Homes revolving fund. (a) The homes revolving fund is a fund from which can be paid the cost of items described in section 15-170-18 and which is replenished through charges, reimbursements, or repayments made for housing units or through transfers from other sources, accounts, or funds, including other financing for a project. Subject to the availability of program funds, the corporation may from time-to-time make advances not exceeding \$120,000,000 in the aggregate (or such other limit set by the legislature) to provide financing for projects which are being developed by:

- (1) The corporation;
- (2) An eligible developer together with the corporation; or
- (3) An eligible developer.

(b) The amount of program funds that may be advanced (up to \$120,000,000 or such other limit set by the legislature) is generally made available to the extent that any outstanding advances are returned to the program but subject to the recommendation of the board and the approval of the governor as provided in this chapter. [Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-401) (Imp: HRS §201G-401)

\$15-170-15 Requests for program funds. In order to request program funds for a specific project, a developer, other than the corporation, must first be determined by the board to be an eligible developer in accordance with chapter 15-174. Each request for program funds must be in writing and shall include and be supported by all information, materials, forms, and exhibits about the project prescribed or required by the corporation. Project funds can only be allocated and advanced for a project which has received the recommendation of the board and which has been approved by the governor. [Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-401) (Imp: HRS §201G-401)

\$15-170-16 Evaluation of requests for program funds. (a) The corporation will review and evaluate each request for program funds. If there is more than one request for program funds, the corporation shall evaluate each request by taking into consideration factors such as the qualifications of the eligible developer, if any, the proposed project site, the design concept, state policy (including the state housing functional plan and the Hawaii state plan), compliance with the purposes and intent of chapter 201G, HRS, and other relevant factors. The evaluation and recommendation of the corporation shall be submitted by the executive director to the board.

(b) The board may recommend that a request for program funds be allocated or may deny a request for program funds for a project. The board may also defer action on any request for project funds and may request that additional information be submitted. If the board recommends that program funds be allocated for a project, the board must make specific findings that the use and application of program funds for the project are consistent with the purposes of the program and submit a recommendation to the governor that program funds be allocated for the project.

(c) For any project that the board recommends to be assisted by program funds, the board shall provide the governor with a summary of the project to be developed. The summary shall include:

- (1) The various aspects of the project, including any projects or loan programs to be a part of the program;
- (2) The methods of financing the project or

- loans;
- (3) The programs;
- (4) Other information which the board deems relevant;
- (5) How the program funds will be returned to the program;
- (6) Specific findings that the application of program funds will meet the requirements of the program and that the application of program funds will comply with the primary objectives of the program. The primary objectives of the program are achieved through a program where the projected use of program funds has been developed so as to give maximum feasible priority to activities which will carry out the broad objectives of meeting the needs of housing including lower cost housing needs; and
- (7) Other information as the governor may request. [Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-401) (Imp: HRS §201G-401)

\$15-170-17 Commitment of program funds. Program funds may be committed in participation with other lenders. The corporation shall not issue nor make any commitment of program funds for any project unless the board has first made a determination that the purposes and amounts for which program funds are to be applied are consistent with the purposes of the program and the governor has approved the commitment of program funds for the project. All commitments for program funds shall be made subject to the availability of program funds. [Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-401) (Imp: HRS §201G-401)

\$15-170-18 Allowable uses of program funds. Program funds may only be used for the purposes of developing and implementing affordable housing development programs including without limitation:

- (1) Development of infrastructure;
- (2) Development of off-site and on-site improvements required for development;
- (3) Providing short-term or interim construction loans;
- (4) Development and construction of housing; and

- (5) Advancing equity capital for the rental housing system administered by the corporation. [Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-401) (Imp: HRS §201G-401)

§15-170-19 Restrictions on use of program funds.

Program funds shall not be used for and of the following purposes:

- (1) To provide the funds necessary to provide mortgage loans to provide the long term permanent financing for a project or the dwelling units therein; or
- (2) To pay administrative expenses of the corporation. [Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-401) (Imp: HRS §201G-401)

§15-170-20 Conditions for program funds. For a commitment of project funds, the corporation may require the eligible developer to enter into an agreement, including development agreement or regulatory agreement, evidencing the eligible developer's obligation to develop the project in a manner which will carry out the intent and purpose of the program. The corporation may require the eligible developer to prepare and maintain such records, including cost certifications, which evidence that project funds are being applied in a manner which meets the requirements of the program. Additionally, the corporation may impose such requirements including restrictions covering the sale of dwelling units set forth in sections 201G-125 through 201G-131, HRS, or such other restrictions which the board shall require as a condition for project funds. [Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-401) (Imp: HRS §201G-401)

§15-170-21 Books and records. The corporation shall maintain proper books and records showing, among other things, the amount and purpose of the application of moneys on deposit in the homes revolving fund and the source of the moneys and separate accounting for earnings on moneys on deposit in the homes revolving fund and proceeds of advances from the general fund and proceeds of borrowings in accordance with generally accepted accounting principles and procedures.

[Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-401)
(Imp: HRS §201G-401)

\$15-170-22 Audit and cost certification. All books and records of a project shall be subject to audit and all expenditures of a project shall be subject to cost certification. [Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-401) (Imp: HRS §201G-401)

\$15-170-23 Security for repayment of advances. The corporation may charge interest on advances of program funds made from the homes revolving fund. All advances, including any interest paid on account of such advances, made from program funds shall be evidenced by documents evidencing the obligation to repay such advances to the program. Such documentary evidence may include not as a limitation a note and mortgage, personal guarantees, letters of credit, bonds, regulatory agreement, development agreement, and building loan agreement. [Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-401) (Imp: HRS §201G-401)

SUBCHAPTER 3

OTHER PROVISIONS

\$15-170-31 Annual report to the governor and the legislature. The corporation shall at least once a year file with the governor and the legislature a report of the homes revolving fund activities for the preceding year. As used in this section, the term year shall mean the corporation's fiscal year beginning on July 1 and ending on June 30. The report shall be incorporated as part of the annual report which the corporation is required to provide pursuant to section 201G-21, HRS. The annual report must be submitted no later than twenty days prior to the convening of each regular session of the legislature. The annual report shall provide the following information on the status of the corporation's programs and finances:

- (1) A description of programs being developed in the current fiscal biennium including:
 - (A) A summary listing of such programs;

- (B) The status of each program;
- (C) The methods of project financing or loans; and
- (D) Other information deemed significant;
- (2) A description of programs planned for development during the two ensuing fiscal bienniums including:
 - (A) A summary listing of such proposed programs;
 - (B) The methods of project financing or loans; and
 - (C) Other information deemed significant;
- (3) A status report of
 - (A) Actual expenditures made for the purposes of the homes revolving fund in the prior completed fiscal year;
 - (B) Estimated expenditures anticipated for the current fiscal year; and
 - (C) Projected expenditures for the ensuing fiscal years to be described in relation to specific affordable housing projects; and
- (4) An annual financial audit and report, which may be combined with the financial audit and report contained in the annual report of the corporation that is required by section 201G-21, HRS, conducted by a certified public accounting firm and based on the corporation's fiscal year beginning on July 1 and ending on June 30. [Eff **OCT 25 1999**]
(Auth: HRS §§201G-4, 201G-401) (Imp: HRS §201G-401)

§15-170-32 Accounting to the state comptroller.

The corporation shall file with the state comptroller at least once a year a report on moneys deposited in depositories other than the state treasury under section 40-81, HRS, and rules adopted thereunder. The report shall be combined with the annual report of the corporation that is required by section 201G-21 HRS. [Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-401) (Imp: HRS §201G-401)

§15-170-33 Relationship to other laws and rules.

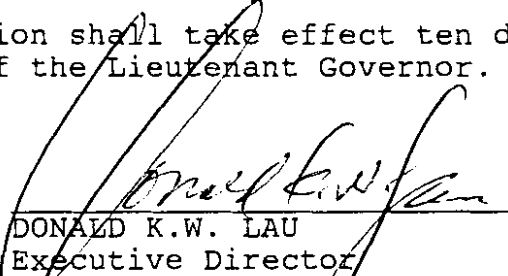
These rules are not intended to supersede any related


provisions of chapter 201G, HRS, and the rules adopted thereunder, and shall be read and applied consistently and shall be complimentary with such other laws and rules, as applicable. [Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-401) (Imp: HRS §201G-401)

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT,
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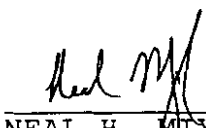
The repeal of chapter 6-331 and the adoption of chapter 15-170, Hawaii Administrative Rules, on the Summary Page dated August 27, 1999, was adopted on August 27, 1999, following public hearings held on Maui on July 15, 1999, Hilo on July 16, 1999, Oahu on July 19, 1999, and Kauai on July 20, 1999, after public notice was given in the Midweek newspaper on June 7, 1999.

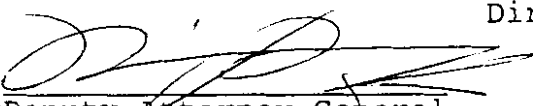
The repeal and adoption shall take effect ten days after filing with the Office of the Lieutenant Governor.


DONALD K.W. LAU
Executive Director
Housing and Community Development
Corporation of Hawaii



SEIJI F. NAYA, Ph.D.
Director
Department of Business, Economic
Development, and Tourism

APPROVED AS TO FORM:


NEAL H. MIYAHIRA
Director of Finance


Deputy Attorney General

APPROVED:


BENJAMIN J. CAYETANO
Governor
State of Hawaii

Dated: 10-14-99

OCT 15 1999

Filed

LIEUTENANT GOVERNOR'S
OFFICE

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